

## **Rule 12, Ariz. R. Crim. P.**

### **GRAND JURY — In general — Revised 11/2009**

The grand jury is an independent body charged with investigating public offenses. A.R.S. §§21-401(2), 21-407. The purpose of a grand jury proceeding is not to determine the ultimate issue of guilt or innocence, but rather to determine whether or not probable cause exists to believe that a crime has been committed and that the person being investigated was the one who committed it. A.R.S. § 21-413; *State v. Baumann*, 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980); *State v. Sanchez*, 165 Ariz. 164, 171, 797 P.2d 703, 710 (App. 1990). Thus, many issues that may be of crucial importance at trial have no relevance at the grand jury level.

The grand jury's primary function is to determine "whether probable cause exists to believe that a crime has been committed and that the individual being investigated was the one who committed it." *State v. Baumann*, 125 Ariz. 404, 408, 610 P.2d 38, 42 (1980). Simply put, the grand jury is not the place to try a case.

*Trebus v. Davis*, 189 Ariz. 621, 625, 944 P.2d 1235, 1239 (1997). *Accord*, *State v. Superior Court*, 139 Ariz. 422, 424, 678 P.2d 1386, 1388 (1984); *State v. Superior Court*, 186 Ariz. 143, 144, 920P.2d 23, 24 (App. 1996).

Because of the grand jury's independent status, any restriction on the evidence the prosecutor may present to the grand jury is in fact a restriction on the grand jury and its right to receive evidence in criminal matters. Any restraints on a grand jury investigation must be carefully scrutinized. *Marston's, Inc. v. Strand*, 114 Ariz. 260, 264, 560 P.2d 778, 782 (1977).

The grand jury proceeding is not a "minitrial" and the Rules of Evidence do not apply in a grand jury proceeding. Ariz. R. Evid., Rule 1101(d); *Marston's, Inc.*, *supra* at

265. Evidence presented to a grand jury need not be admissible in trial. *State v. Fulminante*, 193 Ariz. 485, 491, 975 P.2d 75, 81 (1999). The grand jury can make its determination based in whole or in part upon hearsay evidence. *Franzi v. Superior Court*, 139 Ariz. 556, 565, 679 P.2d 1043, 1052 (1989); *State v. Bowling*, 151 Ariz. 230, 232, 726 P.2d 1099, 1101 (App. 1986).

The United States Supreme Court has held that a court may not dismiss an otherwise valid indictment because the prosecutor has failed to disclose to the grand jury even substantial exculpatory evidence. *United States v. Williams*, 504 U.S. 36, 54-55 (1992). The Supreme Court in *Williams* reasoned that to require the prosecutor to present exculpatory evidence, as well as inculpatory evidence, would transform the grand jury from its historical role as an accusatory body into an adjudicative body. The Court declined to reshape the traditional relationships between the prosecutor, the court, and the grand jury.

By contrast, Arizona case law requires the prosecutor to present to the grand jury "clearly exculpatory evidence," that is, evidence of such weight that it would deter the jury from finding the existence of probable cause. *State v. Coconino County Superior Court (Mauro)*, 139 Ariz. 422, 425, 678 P.2d 1386, 1389 (1984). The *Williams* decision appears to place the rule in *Mauro* in doubt. However, the rule in *Mauro* may be based on rights guaranteed by the Arizona Constitution rather than the United States Constitution. Since no Arizona case has cited *Williams* on this issue, the question is still unsettled.